

**BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA**

**In the Matter of the Accusation and Petition to Terminate
Probation Against:**

GURKIRAT S. TOOR, Respondent

Enforcement Matter No. 18-0165

OAH No. 2019080991

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 10, 2020, in Sacramento, California.

Cynthia Curry, Attorney at Law, appeared on behalf of complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority (EMSA) of the State of California.

David J. Givot, Attorney at Law, represented Gurkirat S. Toor (respondent), who was present throughout the hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on February 10, 2020.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 31, 2013, EMSA issued respondent Emergency Medical Technician-Paramedic (EMT-P) license number P32796 (license). The license expires on October 31, 2021, unless renewed or revoked.

PRIOR ACCUSATION

2. On October 11, 2017, EMSA filed an Accusation (2017 Accusation) seeking to discipline respondent's license on the basis of his June 21, 2017 conviction for driving with a blood alcohol content (BAC) of 0.08 percent or more. Effective November 29, 2017, respondent entered into a Stipulated Settlement and Disciplinary Order (SSDO) resolving the 2017 Accusation. Pursuant to the terms of the SSDO, he agreed that his license would be revoked, the revocation would be stayed, and the license would be placed on probation for three years. The terms and conditions of probation required respondent, among other things, to abstain from consuming drugs or alcohol, and to obey all laws. The SSDO also provided that if respondent violated the terms of his probation, EMSA would be authorized to bring an action to terminate the remainder of his probation and suspend or revoke his license.

CURRENT ACCUSATION AND PETITION TO TERMINATE PROBATION

3. On August 20, 2019, complainant, acting solely in his official capacity, signed and thereafter filed an Accusation and Petition to Termination Probation (2019 Accusation) seeking to discipline respondent's license and terminate his probation on the basis of his July 26, 2019 conviction for driving under the influence of alcohol and

the underlying conduct. Respondent timely filed a Notice of Defense to the 2019 Accusation, and this hearing followed.

July 26, 2019 DUI Conviction

4. On July 26, 2019, in the Superior Court of California, County of Kern, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (a) (DUI), a misdemeanor. He also admitted a sentencing enhancement for having a prior DUI conviction, pursuant to Vehicle Code section 23540. Imposition of sentence was suspended, and he was placed on informal probation for three years on conditions that he: (1) serve 10 days in jail; (2) participate in a Mothers Against Drunk Driving (MADD) victim impact panel; and (3) pay fines, fees, and restitution.

5. The circumstances underlying the conviction occurred on August 13, 2018. Respondent drank alcohol, then drove his vehicle approximately 160 miles before being pulled over by California Highway Patrol (CHP) officers for swerving within his freeway lane. When officers stopped him, he exhibited objective signs of intoxication. Officers administered field sobriety tests, on which he performed unsatisfactorily. A Preliminary Alcohol Screening device measured his BAC as 0.18 percent. He was arrested.

Respondent's Evidence

6. Respondent testified at hearing. He has been an EMT paramedic since 2013, and is very proud of his work. In June 2018, he began working for the Riverside Fire Department through CalFire as a firefighter paramedic.

7. On August 13, 2018, respondent drank beer at a friend's house. His friend, who is also an EMT, had recently had a "bad call" involving a "pediatric code." Respondent went to his friend's house to offer support because respondent has had his "fair share of bad calls." Respondent initially planned on spending the night at his friend's house, but after drinking four beers, decided to visit his girlfriend instead. Respondent's girlfriend lived far away, and he had driven approximately 160 miles toward her house when CHP officers pulled him over.

8. Respondent has not consumed alcohol since August 13, 2018. He began attending Alcoholics Anonymous (AA) meetings in September 2018. From September 2018 through April 2019, he attended AA meetings approximately one to two times per week. Due to his work schedule, he did not attend meetings between May 2019 and October 2019. He attended meetings once per week throughout November and December 2019. He attended 17 meetings in January 2020.

9. Respondent has never had an AA sponsor, does not participate in group speaking at AA meetings, and does not work AA's 12-step program. He goes to AA meetings to "stay humble" and "be grounded." He does not believe he has an alcohol problem.

10. From November 2018 through March 2019, respondent attended nine one-hour therapy sessions with Jody Ruggiero-Balboa, a licensed marriage and family therapist. Three of those sessions consisted of "substance abuse psycho-education." Respondent submitted a letter from Ms. Ruggiero-Balboa, dated December 19, 2019, stating the "focus of [respondent's] treatment was to assist in the development of healthy cognitive patterns and beliefs about self and the world to lead to an alleviation of maladaptive behaviors." Through these sessions, respondent learned about "taking responsibility for [his] own life." Respondent no longer sees Ms. Ruggiero-Balboa.

11. In September 2019, respondent attended a MADD victim impact panel. He found the experience humbling. Also in September 2019, he took a "Life Success Course" from the Personal Success Institute (PSI) in Clearlake, California. Through this seven-day course, respondent learned he is "not bigger than life."

12. Respondent has volunteered to speak at other PSI seminars and in a friend's EMT classroom about his experiences with DUIs. In addition, he plans to start a non-profit organization to help other EMTs and first-responders cope with work-related stress. He recognizes the unique stressors EMTs face, and wants to help others see how the stress of their profession can lead to "these kinds of problems," such as DUI.

13. Respondent resigned from CalFire on December 3, 2019, due to the distance of his work assignment from his family. Since December 16, 2019, he has worked as a quality assurance supervisor for a private ambulance company in Solano County. He does not know whether losing his EMT-P license would affect his employment.

14. Respondent attributed his convictions to "immaturity" and an attitude of "always blaming others." He viewed the consequences following his 2017 conviction as a "slap on the wrist," but says he has now "put in the work" and "feel[s] it." He is confident it "won't happen again" because he is "180 degrees from where [he] was." He is embarrassed and remorseful about his conduct. He is in compliance with the terms of his criminal probation.

Discussion

SUBSTANTIAL RELATIONSHIP

15. EMSA is authorized to discipline a license if the licensee was convicted of a crime "substantially related to the qualifications, functions, and duties of prehospital personnel." (Health & Saf. Code, § 1798.200, subd. (c)(6).) Respondent argued at hearing that his 2019 DUI conviction was not substantially related to the qualifications, functions, and duties of his job because he was not on duty at the time. This is not the applicable standard.

16. "A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a paramedic if to a substantial degree it evidences present or potential unfitness of a paramedic to perform the functions authorized by [his] license in a manner consistent with the public health and safety." (Cal. Code Regs., tit. 22, § 100175, subd. (a).)

17. Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a medical professional's fitness and competence to practice because:

Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance.

(*Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal.App.4th 757, 770.)

18. At hearing, respondent, through counsel, argued that *Griffiths* does not apply here because the medical professional in *Griffiths* was a physician and not an EMT paramedic. Counsel's distinction is without a difference. While a physician and an EMT paramedic may serve different roles within the medical community, members of both professions are knowledgeable about the effects of alcohol on one's ability to drive a car safely. The decision to drink and drive disregards that knowledge, reflects a lack of sound professional judgment, and presents a risk to the public.

19. Moreover, respondent admitted that his DUI occurred after he met with another EMT to discuss the stressors of their shared profession. In addition, respondent intends to start a non-profit organization specifically to address those unique stressors so others can avoid "these kinds of problems," such as DUI. These statements further indicate that respondent's DUI was associated with the stress of his work as an EMT paramedic and therefore demonstrates his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health and safety.

20. For the reasons stated above, respondent's 2019 DUI conviction is substantially related to the qualifications, functions, and duties of an EMT paramedic. As a result, he must demonstrate rehabilitation.

REHABILITATION

21. The determination whether to discipline a professional license should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, mitigation, aggravation, and rehabilitation. (*Arneson*

v. Fox (1980) 28 Cal.3d 440, 449.) When evaluating rehabilitation, EMSA will consider factors such as the nature and severity of the crime, the time that has elapsed since commission of the crime, compliance with probation, and any other evidence of rehabilitation submitted by the respondent. (Cal. Code Regs., tit. 22, § 100176.)

22. Here, respondent submitted insufficient evidence of rehabilitation. His mere expression of remorse does not demonstrate rehabilitation. Rather, a truer indication of rehabilitation is the demonstration of sustained conduct over an extended period of time that the licensee is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) Respondent has not demonstrated sustained lawful conduct over an extended period of time. To the contrary, he committed a DUI less than nine months after the effective date of his SSDO.

23. Furthermore, while respondent has acknowledged his wrongdoing, he has not fully embraced his rehabilitation. He attends AA meetings, but only to “stay humble.” He does not believe he has an alcohol problem. He attended nine hours of therapy, of which three were devoted to substance use, but failed to demonstrate any significant insight into his behavior he gained from those sessions. He is presently in compliance with the terms of his criminal probation, but little weight is given to evidence of lawful conduct while a person is on probation because it is expected that a person will act in an exemplary fashion. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

24. When all the evidence and rehabilitation factors are considered, respondent failed to prove sufficient rehabilitation to demonstrate his ongoing practice as an EMT Paramedic would be consistent with public safety. As a result, his probation should be terminated, and his license should be revoked.

LEGAL CONCLUSIONS

2019 Accusation

1. Complainant bears the burden of proving the allegations in the Accusation. The standard of proof in an administrative action seeking to suspend or revoke a license that requires substantial education, training, and testing is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899.)

2. Rehabilitation is akin to an affirmative defense, and as the proponent of that defense, the burden of establishing rehabilitation is on respondent. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

3. EMSA is authorized to discipline an EMT-P license if the licensee is convicted of "any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel." (Health & Saf. Code, § 1798.200, subd. (c)(6).) As discussed in Factual Findings 4, 5, and 15 through 20, respondent's 2019 DUI conviction was substantially related to the qualifications, functions, and duties of prehospital personnel. Cause therefore exists to discipline his license pursuant to Health and Safety Code section 1798.200, subdivision (c)(6).

4. EMSA is authorized to discipline an EMT-P license if the licensee engages in the "misuse of alcoholic beverages." (Health & Saf. Code, § 1798.200, subd. (c)(9).)

As discussed in Factual Findings 4 and 5, respondent's 2019 DUI conviction, and the underlying conduct, demonstrate his misuse of alcoholic beverages. Cause therefore exists to discipline his license pursuant to Health and Safety Code section 1798.200, subdivision (c)(9).

5. As discussed in the Factual Findings as a whole, and in Factual Findings 21 through 24 in particular, respondent did not meet his burden of demonstrating evidence of sufficient rehabilitation to justify permitting him to retain his license.

Petition to Terminate Probation

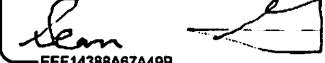
6. Complainant bears the burden of proving the allegations in the petition to terminate probation. The standard of proof on a petition to terminate probation is a preponderance of the evidence. (*Sandarg v. Dental Bd. of Calif.* (2010) 184 Cal.App.4th 1434, 1440-1441.) The term preponderance of the evidence means "more likely than not" (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388), or "'evidence that has more convincing force than that opposed to it.'" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567 [quoting BAJI No. 2.60].)

7. Pursuant to the terms of the Stipulated Settlement and Disciplinary Order, EMSA is authorized to "initiate an action to terminate probation and proceed with actual license suspension/revocation" if respondent fails to comply with any term or condition of probation. As discussed in Factual Findings 2, 4, and 5, respondent violated the requirements that he abstain from the consumption of alcohol and obey all related laws. Cause therefore exists to terminate his probation and impose the stayed discipline against his license.

ORDER

EMT-P license number P32796, issued to respondent Gurkirat S. Toor, is
REVOKED.

DATE: February 20, 2020

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SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

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BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License of:) Enforcement Matter No. 18-0165
) OAH No. 2019080991
)
6 **GURKIRAT S. TOOR**) **DECISION AND ORDER**
License No. P32796)
Respondent.)
_____)

The attached Proposed Decision is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter.

This Decision shall become effective thirty (30) days after the date below. It is so ordered.

DATED:

2/27/2020



Dave Duncan, MD
Director
Emergency Medical Services Authority
State of California